

# Housing and the Regulatory Environment

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# Overview

- ▶ What is the relationship between the regulatory environment and housing?
- ▶ What is the state of the empirical literature on the relationship between regulation and housing cost, supply and distribution?
- ▶ What does this suggest for the Colorado Blue Ribbon Panel on Housing?

# “Regulatory Barriers”

- ▶ The Colorado Blue Ribbon Panel on Housing decided last December to examine and address in its final report:

*“...barriers to the use of [tools available to meet housing needs]: regulatory barriers....”*

(Source: Colorado Blue Ribbon Panel on Housing,  
<http://www.dola.state.co.us/doh/BRPIntro.htm>)

- ▶ The Colorado Division of Housing defines regulatory barriers as:

“...either a deliberate or de facto action that prohibits or discourages the construction of affordable housing without sound reasons directly related to public health and safety; a federal, state, or local statute, ordinance, or practice that excessively increases the cost of new or rehabilitated housing, either by improperly restricting the location of housing, or by imposing unjustified restrictions on housing development with little or no demonstrated compensating benefit.”

- ▶ Focus on “regulatory barriers” goes back at least as far as the 1968 National Commission on Urban Problems (the Douglas Commission).
- ▶ Other milestones include the 1982 President’s Commission on Housing and the 1990 Report of the Advisory Commission on Regulatory Barriers to Affordable Housing: “Not In My Backyard” – which HUD updated this year in a publication called “Why Not In My Backyard?”.
- ▶ HUD has launched “America’s Affordable Communities Initiative” and maintains a Regulatory Barriers Clearinghouse.

# Focus in Colorado

- ▶ Since 1998, the Colorado Division of Housing has issued a series of reports on regulatory barriers.
- ▶ Regulatory barriers are also an integral part of Colorado's Consolidated Plan –in 2000 and in the current draft 2005-2010 plan.
- ▶ DOH has provided technical assistance, has worked with local governments, and has distributed its handbook *Reducing Housing Costs Through Regulatory Reform*.

# Of Increasing Concern

- ▶ According to a leading scholar of regulatory barriers, Michael Schill, currently Dean of the UCLA Law School:

“...regulatory barriers abound and may even be intensifying.”

(Schill (2004))

# General Theory

- ▶ Intuitive idea is that the cost of housing may be increased, the supply of housing reduced, and the allocation of housing misdirected by:
  - Regulatory restrictions (direct or indirect) on housing inputs (land, materials, labor);
  - Direct cost increases (e.g., impact fees); and
  - Delay or other administrative processes.



# Costs and Benefits

- ▶ Assessing the interaction between regulation and housing requires an examination not only of regulatory costs, but also the benefits of regulation.
- ▶ Most empirical studies focus on cost (or other detriments); few attempt to quantify benefits.

(Schill (2004); DOH/Clarion Associates 1998)

# Caution on Causation

- ▶ It can be difficult to disaggregate increases in the price of housing attributable to supply restrictions from increases attributable to demand increases flowing from the amenities generated by regulation.
- ▶ Most likely some of each, but difficult empirical question.

- ▶ Studies often fail to address the extent to which a statistic association between regulation and price may show an effect of the regulation or may simply show that more expensive communities prefer more regulation.
- ▶ Also the housing market is difficult to capture in studies – distinguishing between a regulatory effect and a market effect can be challenging.

(Quigley and Rosenthal (2004))

# Categories of Potential “Barriers”

- ▶ Zoning
- ▶ Growth Management/Growth Control
- ▶ Subdivision Regulation
- ▶ Infrastructure Finance/Impact Fees
- ▶ Environmental and Cultural Protection
- ▶ Building Codes
- ▶ Administrative Process

# Related Concerns

- ▶ At the broadest level, thinking about housing and the regulatory environment can implicate
  - Tax policy, including federal subsidies for single-family housing;
  - Fair Housing, including protections for individuals with disabilities;
  - The structure of local government, particularly local fragmentation.

# Overall Impact

- ▶ The empirical literature often focuses on a single aspect of regulation.
- ▶ The cumulative effect of regulation may be more significant than the sum of individual regulatory requirements and processes.

# Zoning

- ▶ “Monopoly zoning” hypothesis: government concentration (hence reduced local competition) leads to higher entry price.
- ▶ Some empirical support, but clear connection has not been established.

(Quigley and Rosenthal (2004))

# Zoning

- ▶ According to Quigley and Rosenthal, much of the academic literature “seems to establish that land-use regulation increases the price of existing housing while reducing the value of developable land.”
- ▶ But the literature “fails to establish a strong, direct causal effect,” and a “substantial number” of studies show “little or no effect on price.”

(Quigley and Rosenthal (2004))



# Zoning

- ▶ Another long-standing concern has been “exclusionary” zoning (e.g., large lot sizes, restrictions on multifamily siting, etc.).
- ▶ Some states have “fair share” or similar requirements on local jurisdictions to account for regional housing needs.

(Schill (2004))

# Growth Management/Growth Control

## ► Examples:

- Zoning for restricted uses/down-zoning to lower densities/intensities or open space;
- Urban growth boundaries;
- Building moratoria;
- Concurrency requirements;
- Adequate public facility requirements;
- Permit restrictions.

# Growth Management/Growth Control

- ▶ A comprehensive 1992 study in California found “little association between growth control and actual growth,” perhaps because
  - Regulation is largely local, while growth pressures are regional and hard to contain;
  - Population pressures can overcome growth control;
  - Law on the books may not match law in action.

(Quigley and Rosenthal (2004))

# Growth Management/Growth Control

- ▶ Most cross-sectional studies (regulated vs. unregulated) and time-series studies (before and after regulation) do find that growth control measures “are associated with higher housing prices.”
- ▶ Some studies also find correlation to lower values for constrained, undeveloped land.
- ▶ Studies do not account for value to consumers or offsets in other costs (e.g., transportation).

(Been (2004))

# Subdivision Regulation

- ▶ Anecdotal evidence that what HUD calls “gold-plated subdivision regulations” – particularly relating to physical layout and materials.
- ▶ Rigorous empirical research appears lacking (HUD is currently sponsoring research on this).

# Infrastructure Finance/Impact Fees

- ▶ Many tools to finance infrastructure, including:
  - General tax revenue or indebtedness repaid with general revues;
  - Special assessments;
  - Exactions; and
  - Impact fees.

# Infrastructure Finance/Impact Fees

- ▶ The “regulatory barriers” literature has increasingly focused on impact fees.
- ▶ Impact fees may require developers/consumers of new housing to internalize the cost of development efficiently.
- ▶ May be offset by lower property taxes.
- ▶ May also increase housing supply by enabling growth and facilitating certainty in the development community.

(Been (2004))

# Impact Fees

- ▶ Key questions are incidence (who pays?) and structure of the fee.
- ▶ Fees should be tailored to reflect the costs of servicing a development (and to reflect the impact that the development has on the community).
- ▶ May have negative distributional consequences – restrict newcomers.

(Been (2004)).



- ▶ Empirical research does support the proposition that impact fees raise the cost of both new and existing housing, but the research is limited.
- ▶ A 2003 study showed an increase in the price of housing (new/existing) of between 0 and 64/68 cents per dollar of fee; that property taxes were reduced by approximately that land prices declined by roughly the amount of the fee.

(Been (2004)).

- ▶ Some research shows a rise in land value in anticipation of the infrastructure to be added.
- ▶ On supply, some indication that impact fees reduce the number of new homes built, but a study of 44 U.S. metro areas over an 11-year period showed that development fees had little impact on the rate of new construction.

(Been (2004); Quigley and Rosenthal (2004)).

# Impact Fees

- ▶ Current literature is unable “to distinguish between a price effect that reflects added value to the homebuyer from the amenities for which the fee was spent (or from efficiencies achieved by the shift in financing methods) and a simple ‘pass-through’ of a tax that adds no value to the consumer.”

(Been (2004))

# Environmental Regulation

## ► Examples:

- Clean Air Act Amendments;
- Clean Water Act;
- Comprehensive Environmental Response, Compensation, and Liability Act (Superfund);
- Endangered Species Act;
- National Environmental Policy Act;
- State and local environmental regulation.

(Kiel (2004)).

# Environmental Regulation

- ▶ Very little empirical research on the direct impact that these regulations have on the supply or cost of housing.
- ▶ The few studies that have been done tend to show that regulations restricting the possible uses of undeveloped land decreases the price of that land, but increases the price of nearby land.

- ▶ One issue with respect to restrictions in land is determining the amount of land restricted versus developable land remaining.
  - One 2001 study in California estimated that environmental constraints would only “slightly reduce” the state’s ability to accommodate growth through 2010, because much of the restricted land was not suitable for development.
- ▶ Environmental regulation – which can be national in scope - also has broader (and hard to measure) amenity effects and consequences for inputs to housing other than land (e.g., lumber).

(Kiel (2004)).

# Building Codes

- ▶ Focus in the literature is on both substantive and administrative impediments, both for new construction and for rehabilitation (important for affordable housing).
- ▶ In theory, impediments can arise from resistance to innovation and cost-saving materials; conflicts in administration; inadequate inspectors; and others.

(Listokin and Hattis (2004))

# Building Codes

- ▶ Most quantitative analyses find code-related housing cost increases of roughly five percent or less.
- ▶ Literature frequently lacks benchmarks and cost-benefit analysis.
- ▶ Also, relatively little work done on emerging national codes (various of the ICC's I-codes are being adopted in Colorado, for example).

(Listokin and Hattis (2004))



# Regulatory Process

- ▶ Some consider delays in permitting and approvals, “overly rigid” enforcement strategies, and duplication of and inconsistency in administration as independent regulatory barriers.
- ▶ Difficult at times to distinguish dysfunctional regulatory process from the manifestation of community opposition.
- ▶ Empirical literature is limited – primarily case studies in selected jurisdictions.

(May (2004)).

# Conclusions

- ▶ The empirical literature underscores the challenge of evaluating “barriers” to housing – the literature addresses important questions, but gives surprisingly few clear answers.
- ▶ Normative questions are largely unaddressed in the academic literature.
- ▶ This suggests caution and careful examination in evaluating the link between housing and the regulatory environment.

# Considerations for the Colorado Blue Ribbon Panel on Housing

- ▶ What tools are available to understand more completely the costs/benefits of various types of regulation in Colorado?
- ▶ Is more needed – and, if so, what - to improve on the work already done by the Department of Local Affairs and the Division of Housing (encouraging comprehensive planning; working with local governments on streamlining processes; finding appropriate impact fee waivers, etc.)?
- ▶ How can the Panel move beyond the current dialogue on housing and the regulatory environment to consider regionalism, inclusionary zoning, increased funding, and other issues?